

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Statesboro Division

IN RE:)	Chapter 7 Case
)	Number <u>85-60101</u>
CHARLES McRAE)	
)	
Debtor)	
_____)	
)	
WILLIAM E. WOODRUM, JR.,)	FILED
CHAPTER 7 TRUSTEE)	at 5 O'clock & 12 min P.M.
)	Date: 6-24-92
Movant)	
)	
vs.)	
)	
ESTECH, INC.)	
)	
Respondent)	

ORDER

William E. Woodrum, Jr., the Chapter 7 trustee, objects to the proof of claim filed by Estech, Inc. ("Estech"). Estech objects to the trustee's proposed distribution of assets. The debtor, Charles S. McRae d/b/a Lyons Produce Company d/b/a Lyons Cotton & Fertilizer Company, filed for protection under Chapter 7 of the Bankruptcy Code on July 16, 1985. Estech timely filed a proof of secured claim for Eighteen Thousand Forty-One and 32/100 (\$18,041.32) Dollars, secured by a second mortgage against real estate evidenced by a deed to secure debt attached to the proof of claim. On November 21, 1985 debtor was granted a discharge. The

Chapter 7 trustee abandoned the real estate securing Estech's claim. The parties do not dispute that the value of the property abandoned was insufficient to satisfy the claim of the first lienholder. It is also undisputed that prepetition Columbia Nitrogen Corporation obtained a judgment lien against the debtor for

Twenty-Three Thousand One Hundred Sixty-Four and 38/100 (\$23,164.38) Dollars.

The trustee proposes the following distribution:

1.	PREVIOUS DISBURSEMENTS		
a.	Internal Revenue Service	\$ 3,033.00	
b.	Georgia Department of Revenue	1,126.00	
2.	ADMINISTRATIVE EXPENSES		
a.	WILLIAM E. WOODRUM, JR. (Trustee's Commission)	\$ 805.24	
	Trustee Expense		
b.	Clerk, U.S. Bankruptcy Court		
	Adversary No. 687-0030 Filing Fee	\$ 480.00	
	Notice Fee	\$ 64.00	
c.	Reddick, Riggs, Maclachlan & Hunter		
	(accounting fees)	\$ 695.00	
d.	Internal Revenue Service-1987 Income Tax		
	pursuant to attached Notice of Intent to		
	Levy	\$ 859.58	
e.	William E. Woodrum, Jr., Attorney Expenses	\$ 78.47	
f.	William E. Woodrum, Jr., Attorney Fee	\$ 2,280.00	
g.	Alan P. Layne, Attorney Fee for collection	\$ 1,668.78	
	of Clint James Account		
3.	CREDITOR CLAIMS		
a.	Columbia Nitrogen Corporation	\$10,250.82	
	TOTAL DISBURSEMENTS		\$21,465.49

The trustee does not contest the existence or validity of the debt underlying Estech's proof of claim, which is evidenced by a promissory note dated October 28, 1981 attached to the proof of claim. The trustee argues, however, that Estech's claim was satisfied in full by the abandonment of property securing the claim.

The trustee cites no authority in support of his argument. Estech did not foreclose its security interest in the property securing its claim and thus is not subject to State law requirements for perfecting a deficiency claim, which apply only to a foreclosing creditor. See O.C.G.A. §11-9-504. The trustee's argument is incorrect. The abandonment of the property securing Estech's claim does not extinguish Estech's claim, it renders Estech an unsecured creditor.¹

¹ I note that the facts of this case are distinguishable from the facts in In re: Leroy Moore, Ch. 11 case No. 88-40105 (Bankr. S.D. Ga. May 31, 1990), wherein I confirmed Moore's proposed Chapter 11 plan over the objection of M.C. Anderson, a

As Estech retains an unsecured claim, it has standing to object to the trustee's proposed distribution. The trustee proposes to distribute to Columbia Nitrogen, Inc., a judgment lien creditor

of the debtor Ten Thousand Five Hundred and No/100 (\$10,500.00) Dollars raised by the sale of bonds, property of the estate. Estech contends Columbia Nitrogen is a general unsecured creditor - and thus not entitled to payment from the bond proceeds ahead of other unsecured creditors - because Columbia Nitrogen's judgment lien is void pursuant to 11 U.S.C. §524(a)(1). Section 524(a) provides in pertinent part:

A discharge in a case under this title [11] --
(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under §727 . . . of this title, whether or not discharge of such debt is waived. . . .

creditor, pursuant to the cramdown provisions of 11 U.S.C. §1129(b), having determined the plan's treatment of Anderson's claim, which like Estech's had been secured by a second lien against real estate, was "fair and equitable" even though the plan expressly provided that Anderson's claim was satisfied by the trustee's abandonment of Anderson's collateral. In Moore, I had previously determined following a hearing that the value of the property securing Anderson's claim was sufficient to satisfy both the claim of the first lienholder and Anderson. Because the court-determined value of the real estate at the time of the abandonment was sufficient to satisfy the first lienholder's claim and Anderson's claim, the second lienholder, Anderson, through the abandonment, received as of the date of confirmation the indubitable equivalent of his claim. See 11 U.S.C. §1129(b) (2) (A) (iii). This is true even though the price bid in at foreclosure was sufficient to pay the claim of the first lienholder only. Moore is distinguished from this case because here there was no determination of value prior to the trustee's abandonment of the property in question and, moreover, the issue here is not whether Estech received the "indubitable equivalent" of its claim, but whether following abandonment Estech retains an unsecured claim.

Estech is incorrect. Unavoided prepetition liens survive the discharge of a debtor's personal liability on the underlying debt.

Estate of Lellock v. Prudential Insurance Company of America, 811 F.2d 186, 189 (3rd Cir. 1987); In re: Hagemann, 86 B.R. 125, 126-27 (Bankr. N.D. Ohio 1988); 3 Collier on Bankruptcy, ¶524.01[3] (L. King, 15th ed. 1992). "Section 524 is designed to protect a debtor from in personam liability but does not protect a debtor from in rem liability on an unavoidable, valid lien." In re: Hagemann, supra, at 127. Columbia Nitrogen's judgment lien survives discharge of the debtor's personal liability for the underlying debt and attaches pursuant to State law to all property of the debtor, both real and

personal. O.C.G.A. §9-12-80.² Columbia Nitrogen, a secured creditor, is entitled to payment by the trustee ahead of unsecured creditors to the extent its claim is secured. No other objections to the trustee's proposed distribution have been filed.

It is therefore ORDERED that the trustee's objection to the claim of Estech

²In Georgia, a judgment becomes a lien against debtor's personal property automatically upon entry of the judgment, Matter of Tinsley, 421 F.Supp. 1007 (M.D.Ga. 1976) (applying Georgia law), Aff'd, 554 F.2d 1064 (5th Cir. 1977), but against real property only upon recordation of the judgment pursuant to O.C.G.A. §9-12-86. Nat. Bank v. Morris-Weathers Co., 248 Ga. 798, 286 S.E.2d 17 (1982). Estech does not dispute the attachment, force and validity of Columbia Nitrogen's lien other than to argue that the lien is void pursuant to 11 U.S.C. §524(a). No party in interest raises recordation of Columbia Nitrogen's judgment lien as an issue concerning the priority of competing claims. See O.C.G.A. §9-12-81(b) (when money judgment in county of defendant's residence creates lien against third parties without notice).

is overruled; Estech's unsecured claim in the amount of Eighteen Thousand Forty-One and 32/100 (\$18,041.32) Dollars is allowed;

further ORDERED that Estech's objection to the trustee's proposed distribution is overruled;

further ORDERED that the trustee's proposed distribution of assets in this Chapter 7 case is approved.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 24th day of June, 1992.